

upon it. The precise period at which the assignment was made does not very clearly appear, and has been fully discussed at the bar. It was, however, certainly made in the spring of the year 1845; but whether before or after the first bill was filed on the 5th of April, 1845, is not distinctly shown; and, perhaps, if the case could be made to turn upon the question, whether it preceded or followed that period, the judgment should be against the defendants, who, it must be presumed, could clear up the doubt by producing the assignment.

The validity of this assignment is impeached upon two grounds:

1st. It is said to be fraudulent, under the statute of 13 Elizabeth, as having been made to defeat, hinder and delay creditors; and

2d. As being in fraud of our insolvent system.

There can be no doubt that the assignment was made for a valuable consideration, but that, alone, as was correctly remarked, is not sufficient. It must also be *bona fide*. But can it be successfully contended, in this case, that Joseph Dilley had purposely thrust himself into the affairs of these parties, for the fraudulent purpose of hindering or defeating their creditors? The examples put in the books, of purchases which have been deemed fraudulent, as against creditors, though fair prices have been paid for the property, show clearly, I think, that this transaction cannot be successfully assailed upon this ground. 1 *Story's Eq.*, sec. 369. And by the common law, it is well established, that a debtor may secure one creditor, to the exclusion of others, either by payment or a *bona fide* transfer of his property.

If, therefore, this transaction between Edwards and Dilley can be brought into question, it must be upon the ground, that it is an undue and improper preference under our insolvent system. And conceding, for the present, that these plaintiffs have a standing in court to impeach the transfer upon that ground, I shall very briefly inquire whether they have made out such a case upon the evidence as will, in conformity with the principles established by the courts in the administration of the insolvent system, entitle them to relief.